

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

CITY OF REHOBOTH BEACH POLICE
DEPARTMENT,

and

LOCAL 326, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO.

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Representation Petition

No. 96-10-198

Appearances

*Gregory Ferrese and Walter Speakman, Esq.,
for the City of Rehoboth
Billy D. Mendenall, for Local 326, IBT*

BACKGROUND

The City of Rehoboth Beach, Delaware (“City”) is a public employer within the meaning of §1602(1) ¹ of the Police Officers and Firefighters Relations Act (“POFERA”), 19 Del.C. Chapter 16 (1986). The total full-time compliment of police officers of the Rehoboth Police Department includes eighteen (18) employees, including the Chief of Police and four (4) Sergeants. The police force operates twenty-four (24) hours a day, every day. There are four (4) shifts, each staffed by one Sergeant and three full-time police officers of lesser rank. These

¹ “Public employer” or “employer” means the State or political subdivisions of the State or any agency thereof; any county or any agency thereof; or any municipal corporation or municipality, city or town located within the State or any agency thereof, which, (1) upon the affirmative legislative act of its common council or other governing body has elected to come within Chapter 13 of this title, (2) hereafter elects to come within this Chapter, or (3) employs 25 or more full-time employees. For purposes of paragraph (3) of this subsection, “employees” shall include each and every person employed by a public employer, except: (a) any person elected by popular voter; and (b) any person appointed to serve on a board or commission. 19 Del.C. §1602(1), (1996).

shifts are supplemented by seasonal employees during the resort season. Each shift works a rotating schedule of eight hour shift assignments.

Local 326 of the International Brotherhood of Teamsters, AFL-CIO (“IBT”), is an employee organization within the meaning of 19 Del.C. §1602(f) ².

On October 17, 1996, the IBT filed a Petition for Bargaining Unit Determination and Certification of Exclusive Representative, seeking to represent:

All Full Time Police Officers Below the Rank of Lieutenant, To include: Patrolman, Patrolman First Class, Corporal, Detective, and Sergeant.

The City objected to the inclusion of Sergeants in the bargaining unit, asserting that they serve in a supervisory capacity. Specifically, the City asserted that Sergeants:

- Work directly under the police chief and are responsible for supervising, evaluating, recommending disciplinary action and recommending merit increases for all those police officers directly under their supervision.
- In the absence of the police chief, one of the Sergeants assumes the responsibilities of the police chief.

A hearing was held on December 3, 1996, to receive evidence and argument concerning the appropriateness of including Sergeants in the bargaining unit with all other officers below the rank of Sergeant. This is the decision resulting therefrom.

ISSUE

Is the position of Sergeant, within the City of Rehoboth Beach Police Department, appropriate for inclusion in the bargaining unit with all other officers below the rank of Sergeant?

POSITIONS OF THE PARTIES

City of Rehoboth:

² “Employee organization” means any organization which admits to membership police officers or firefighters employed by a public employer and which has as a purpose the representation of such employees in collective bargaining, and includes any person acting as an officer, representative or agent of said organization.

The City argues there is an inherent conflict of interest in including Sergeants in a bargaining unit with the officers they are responsible for supervising. It asserts that because Sergeants are directly involved in the supervision, evaluation and promotion of officers of lesser rank, including them in the bargaining unit will contribute to operational disciplinary difficulties for the employer. The City argues that as “managerial, senior level positions”, Sergeants do not share a community of interest with rank and file police officers.

IBT:

The IBT argues that the Sergeants work the same shifts and share the same responsibilities as officers of lesser rank, namely, answering radio calls, traffic enforcement, enforcement of City Ordinances and State statutes, filling out reports, making arrests, and other routine police work. It notes that the education and experience requirements for Sergeants, Corporals and Patrolman positions are identical.

The IBT asserts that, although the Sergeants do perform “roll-call” functions on each shift and perform other functions of a Shift Commander, they do not have independent authority to discipline, hire or fire employees, to change departmental procedures or policies relating to the performance of duties, maintaining records or establishing safety procedures. It argues that the authorization of overtime and the scheduling of vacation in which Sergeants are involved is primarily ministerial rather than an exercise of discretion sufficient to destroy the community of interest Sergeants share with other Rehoboth police officers.

OPINION

The PERB has broadly construed employee representation as a fundamental right of individual employees under the statutes it administers. In RE: U.D. Bus Drivers, Del.PERB, Rep. Pet. 95-04-126 (1995, PERB Binder @ p. 1210). Positions which are not statutorily excluded from eligibility for representation can only be excluded from bargaining units where

they are inappropriate based on the considerations set forth in 19 Del.C. §1610(d). The PERB has held that “... except for the most compelling reason(s), eligible employees should not be denied access to the rights and protections to which they are otherwise entitled [under the statute]”. In RE: Internal Affairs Officer of the Wilmington Fire Department, Del.PERB, Rep. Pet. 95-06-142 (1996, PERB Binder @ 1397).

The Police Officers and Firefighters Employment Relations Act differs fundamentally from the other two statutes administered by the PERB in not identifying or defining “supervisory employees” as a separate and distinguishable category of employees. Further, the POFERA neither expressly precludes PERB from including supervisory employees in bargaining units with those they supervise, as does the Public School Employment Relations Act,³ nor does it exclude supervisory employees from eligibility for representation, as does the Public Employment Relations Act.⁴ The differences between the POFERA and the other two statutes administered by the PERB reflect an intent by the state legislature to create different and distinct standards for the treatment of supervisory employees. Under the POFERA there is no statutory presumption that supervisory employees are inappropriate for inclusion in any bargaining unit.

In considering the appropriateness of a proposed bargaining unit, PERB is charged with applying the factors set forth in 19 Del.C. §1610(d):

In making its determination as to the appropriate bargaining unit, the Board or its designee shall consider such factors as the similarity of duties, skills and working conditions of the employees involved; the history and extent of employee organization; the recommendations of the parties involved; the effect of overfragmentation of bargaining units on the efficient administration of government; and such other factors as the Board may deem appropriate.

Numerous factors impact the determination of an appropriate bargaining unit and none alone is determinative in resolving questions of appropriateness. The unit designated as appropriate is not required to be the only appropriate bargaining unit. In RE: Caesar Rodney

³ 14 Del.C. §4010(d): ... The Board or its designee shall separate supervisory and nonsupervisory employees into separate appropriate bargaining units for all units created subsequent to July 18, 1990.

⁴ 19 Del.C. §1610(d): ...The Board or its designee shall exclude supervisory employees from all appropriate units created subsequent to September 23, 1994.

School District Instructional Aides, Del.PERB, Rep. Pet. 91-06-065 (1992, PERB Binder I @ p. 743).

Similarities of Duties, Skills and Working Conditions

The statute does not require that all employees in an appropriate bargaining unit perform the same job function but rather that all bargaining unit employees share a community of interest premised upon the similarity of their duties, skills and working conditions. In RE: Battalion Chiefs of the Wilmington Fire Dept., Del.PERB, Rep. Pet. 95-06-142 (1995)(PERB Binder II@ p.1253). The “community of interest” shared by various positions in a given work environment does not lend itself easily to a precise definition and a mechanical application of the law. The ultimate determination of appropriateness requires analysis of the specific circumstances presented. In RE: University of Delaware Bus Drivers, (Supra.).

The desired education and training standards for Patrolmen, Corporals and Sergeants are identical, as evidenced in the job descriptions for these positions which are part of the document entitled "Position Descriptions for Thirty-five Positions in the City of Rehoboth Beach Delaware", which was prepared by the University of Delaware and approved and adopted by the City Commissioners on November 13, 1986. The knowledge, skills and abilities levels desired are also identical, in large part, for these positions:

Knowledge of City and State laws and ordinances, including felonies, misdemeanors, criminal and civil laws, and ordinances; knowledge of the physical layout of city; knowledge of the appropriate use of firearms; knowledge of search and seizure procedures; knowledge of radar and traffic procedures; knowledge of criminal investigative techniques and procedures; knowledge of the appropriate procedures to detect and make arrests for drunk driving; knowledge of radio codes; knowledge of procedures to enter data on a computerized police network. Skill in the use of firearms and skill in the use of other protective devices and procedures; skill in driving at high rates of speed. Ability to observe and recall situations and events; ability to detect and deter criminal activity; ability to understand and carry out complex oral instructions; ability to react quickly and calmly in emergency situations; ability to communicate effectively both verbally and in writing; ability to enforce laws and ordinances with firmness, tact, and impartiality; ability to maintain good physical condition; ability to work shift work; ability to

perform a variety of nonstandard procedures and resolve a wide range of problems; ability to work outdoors.

The Sergeant job description differs only in that it also includes the "... ability to instruct and train other officers and police personnel; ability to plan and supervise the work of subordinates." Although most of the testimony during the hearing focused on the differences between the job responsibilities of Sergeants and other police officers of lesser rank, it was clear that all of the police officers of this small police force are primarily engaged in standard police work and share a community of interest in performing tasks required to protect the life, property and public peace in this municipality.

The City argued that the Sergeants are responsible for a number of supervisory responsibilities which are sufficient to overcome their basic community of interest with other officers and which are so compelling as to support a determination that Sergeants are inappropriate under the law for inclusion in the bargaining unit with officers of lesser rank.

The City asserts that Sergeants have authority to issue written directives to the officers on their shifts. Testimony clarified that these directives relate to the assignment of individual officers to particular job duties during their shifts. Departmental policies, procedures, and practices, on the other hand, are set forth in Directives which comprise the Police Department's Standard Operating Procedures ("SOP's"). These policies, procedures and practices cannot be changed by the written directive of any Sergeant, or even by the Chief of Police. Suggestions for modifications may be presented by police officers to the Chief, who may send them to the City Manager for his consideration. The City Manager exercises his discretion in determining whether or not to present the proposed modification to the City Commissioners. Ultimately, only the Commission itself can modify the Department's SOP's.

The role of the Sergeants in the promotion of junior officers was identified as a significant factor in differentiating Sergeants from officers of lesser rank. Sergeants are responsible for completing a Promotability Evaluation (Form RB94) for "candidates" for the ranks of Corporal and Sergeant, as set forth in Directive 34, which was included in City Exhibit 1. The Directive, however, states that the composite rating on the RB 94 "shall comprise five

percent (5%), or five points of the [candidate's] composite score". This minimal contribution to the process of selecting an appropriate candidate for promotion is not sufficient to destroy the community of interest Sergeants share with the other police officers.

It is undisputed that each Sergeant is responsible for evaluating the three full-time officers and seasonal officers assigned to his shift. Draft evaluations are prepared by individual Sergeants and forwarded to the Chief of Police for his review and comments. The drafts are then returned to the Sergeants, with comments and recommendations from the Chief. Sergeants may discuss questions they have regarding the Chief's comments or suggestions with the Chief. Testimony established that the Sergeants do alter their original evaluations to conform with the Chief's suggestions. Only after the draft evaluation has been reviewed by the Chief and any changes made is the evaluation made available to the evaluated officer.

Although the City stated Sergeants recommend merit increases for officers on their shifts, this process was not further explained by testimony or documentation. It was simply asserted that merit increases are based upon the performance evaluations discussed above. The record does not establish that the Sergeants possess sufficient independent authority either in the evaluation process or in the granting of merit increases to overcome the community of interest they share with other police officers.

It is clear from the testimony that the ultimate responsibility for all budgetary matters resides with the City Commissioners. In drafting a budget request for the police department for submission to the Commission, the Chief solicits input from officers who perform "special duty responsibilities" which have associated costs. There was no testimony or documentation that special duty officers are given preliminary guidelines in drafting the program requests. Although Sergeants currently hold many of these special positions, there is testimony that senior police officers of lesser rank have also served in these positions. The original budgetary input from the special duty officers is discussed with the Chief, who then makes a decision as to which and to what extent the special duty budgetary requests become part of the Department's annual budget request.

Further there was no testimony that the special duty officers have responsibility for managing the annual budgets for these special programs. The Chief's memoranda designating an Acting Chief for periods of his planned absences from the City (introduced as Union Exhibits #2 and #3) support the conclusion that it is the Chief who maintains exclusive authority to disburse funds. Even in the Chief's absence, the Acting Chief is explicitly "... not authorized to approve, sign or handle... any Material Requisition forms (P.O.'s)."

The role of Sergeants in the disciplinary process is circumscribed by the statutory constraints of the Law Enforcement Officers' Bill of Rights, 11 Del.C. Chapter 92.⁵ Testimony was not presented as to how the disciplinary procedure has been applied in the past, other than that the City stated that neither the Sergeants nor the Chief have the authority to impose final discipline on a police officer.

For these reasons, there is an insufficient basis on which to conclude that Sergeants do not share a community of interest with officers of lesser rank in the skills required, duties performed and conditions under which they work in the daily performance of their duties.

History and Extent of Organization:

There is no prior collective bargaining history between the City of Rehoboth Beach and its police officers. Therefore, this statutory consideration has no bearing on the determination of the appropriate bargaining unit.

Recommendations of the Parties:

The City and the IBT are opposed in their respective recommendations for the determination of an appropriate bargaining unit of Rehoboth Police Officers. For this reason, the recommendations of the parties have no direct impact on resolution of this issue.

⁵ The Hearing Officer takes judicial note of the fact that Sergeants are also covered by the Law Enforcement Officers' Bill of Rights. 11 Del.C. §9200(b).

Overfragmentation:

The efficient administration of municipal government requires designation of the fewest bargaining units as is consistent with the statutory rights of public employees to organize and choose a representative for meaningful and effective representation. In RE: WFD Battalion Chiefs (Supra.).

The City has argued that it would prefer to bargain with two bargaining units rather than have Sergeants included in the bargaining unit with rank and file police officers. The IBT petitioned to represent a single unit. As there are currently no existing bargaining units within the Rehoboth Police Department, consideration of the effect of overfragmentation is not relevant to resolving the issue currently before the PERB.

DECISION

Based upon the circumstances set forth in the record created by the parties and specifically considering the smallness of this police department, there is no compelling reason to conclude that the Sergeants perform duties, require skills and/or work under conditions so distinguishable from the officers of lesser rank in Rehoboth so as to support a finding that they do not share a community of interest. Consequently, the position of Sergeant in the Rehoboth Beach Police Department is found to be appropriate for inclusion in the bargaining unit with all other full time police officers below the rank of Sergeant.

THEREFORE, based on the circumstances presented by this petition, the appropriate bargaining unit is determined to be:

ALL FULL TIME POLICE OFFICERS OF THE REHOBOTH BEACH
POLICE DEPARTMENT AT AND BELOW THE RANK OF SERGEANT,⁶

⁶ Although the IBT petitioned for the unit to be defined as "... at or below the rank of Lieutenant", currently the position of Lieutenant does not exist in the Rehoboth Beach Police Force. Therefore, for the purposes of accuracy, the PERB defines the unit to be all police officers at and below the rank of Sergeant.

including the positions of Patrolman, Patrolman First Class, Detective, Corporal, and Sergeant.

An election will be scheduled within thirty days of the issuance of this decision to determine if and by whom the employees in this bargaining unit wish to be represented for purposes of collective bargaining.

IT IS SO ORDERD.

/s/Deborah L. Murray-Sheppard
DEBORAH L. MURRAY-SHEPPARD
Principal Assistant/Hearing Officer
Del. Public Employment Relations Bd.

DATED: 6 January 1997